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9 Attorneys for Defendant
 10 MBH ARCHITECTS, INC. aka McNULTY
 11 BRISKMAN HEATH

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 14 UNITED STATES DISTRICT COURT
 15
 16 NORTHERN DISTRICT OF CALIFORNIA
 17
 18 SAN FRANCISCO DIVISION

19 BOVIS LEND LEASE, INC. as assignee
 20 of LNR-LENNAR BRANNAN STREET,
 21 LLC,

22 Plaintiff,

23 vs.

24 MBH ARCHITECTS, INC. aka
 25 McNULTY BRISKMAN HEATH and
 DOES 1 through 150, inclusive,

Defendant.

MBH ARCHITECTS, INC. aka
 McNULTY BRISKMAN HEATH,

Cross-
 Complainant,

vs.

LNR-LENNAR BRANNAN STREET,
 LLC, and ROES, 1 through 150,
 inclusive,

Cross-
 Defendant.

CASE No. C 07-05262 JSW

**THIRD PARTY IMPLAIDER
 COMPLAINT FOR EXPRESS
 CONTRACTUAL INDEMNITY AND
 DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Action Removed: October 16, 2007

Judge: Hon. Jeffrey S. White

Trial Date: April 20, 2009

1 Third Part Complainant MBH Architects, Inc. ("MBH") alleges:

2 1. MBH is and was at all times herein mentioned a citizen of the State of
3 California.

4 2. On information and belief, LNR-LENNAR BRANNAN STREET, LLC
5 ("Lennar") is a California limited liability company.

6 3. MBH alleges that the true names and capacities, whether individual,
7 corporate or otherwise, of third party defendants Roes 1 through 30 are unknown to MBH at the
8 present time, who therefore sues said third party defendants by such fictitious names. MBH is
9 informed and believes and thereon alleges that each of said third party defendants named herein
10 as a Roe is legally responsible in some manner for the events and happenings herein complained
11 of and thereby proximately caused the damages suffered by MBH and alleged in this cross-
12 complaint. MBH will amend this third party impleader complaint to allege their true names and
13 capacities when ascertained.

14 4. In doing the things herein alleged, third party defendants, and each of them,
15 including ROE third party defendants, were the agents, employees, and/or representatives of each
16 other and/or acting in the course and scope of said agency, employment and/or representation in
17 the matters herein alleged.

18 5. The jurisdiction of the court over this subject matter is predicated on 28
19 U.S.C. §1332 in that it is a civil action between citizens of different states and the matter in
20 controversy exceeds the sum of \$75,000, exclusive of interest and costs. Such jurisdiction existed
21 at the commencement of the action and at the time this action was removed to Federal Court.

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1 6. On or about January 24, 2000, MBH and Lennar entered into a written
 2 contract (the "Contract") whereby MBH agreed, in consideration for payment of \$2,511,000, by
 3 Lennar, to furnish and perform various professional services for the real property and residential
 4 homes known as Brannan Square located at 200 Brannan Street in San Francisco, California
 5 (hereinafter "Project") as summarized in the Contract attached to this Third Party Impelader
 6 Complaint as Exhibit A. As a term and condition of this Contract set forth in Paragraph 6.07,
 7 Lennar agreed to indemnify and hold harmless MBH from losses, costs, claims, damages,
 8 liabilities and attorneys' fees which MBH incurs as a result of any negligent errors, acts or
 9 omissions of Lennar or any contractor or subcontractor employed or retained directly by Lennar.

10 7. The Contract also provides that "Should any claim or action or proceeding
 11 be commenced between the parties hereto or their representatives concerning any provision of
 12 this Agreement or the rights and duties of any person or entity in relation thereto, the party
 13 prevailing in such action, claim or proceeding, as the case may be whether by out of court
 14 settlement or final judgment, shall be entitled, in addition to other such relief as may be granted,
 15 to the reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all
 16 other costs incurred in such action or proceeding and any other appeals in connection therewith."

17 8. On June 12, 2007, an action was commenced in the Superior Court of the
 18 State of California in and for the County of San Francisco, entitled Bovis Lend Lease, Inc.,
 19 Plaintiff vs. MBH Architects, Inc., as Case Number CGC07-464235. According to the
 20 Complaint, Lennar assigned to Bovis all of its rights and remedies against MBH and each of
 21 MBH's subconsultants arising out of the Contract. Bovis subsequently filed this action arising
 22 out of MBH's alleged failure to provide proper plans and details for the Project, which in turn
 23 delayed the completion of the project as well as contributed to significant construction defect
 24 claims by the residents of 200 Brannan

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FIRST CAUSE OF ACTION

(Contractual Indemnity)

9. MBH refers to and incorporates herein by reference the allegations of
 3 paragraphs 1 through 8 above.

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 5 10. MBH and Lennar entered into the Contract in which MBH agreed to
 6 furnish and perform various professional services. Under the terms of the Contract, Lennar
 7 agreed to indemnify and hold harmless MBH from losses, costs, claims, damages, liabilities and
 8 attorneys' fees which MBH incurs as a result of any negligent, errors, acts or omissions of Lennar
 9 or any contractor or subcontractor employed or retained directly by Lennar.

10. 11. MBH furnished and performed such professional services.

11. 12. Bovis has filed a Complaint in this action seeking damages arising out of
 13 such professional services, and encompassed by the aforementioned indemnity obligations.

14. 13. By virtue of the above-described contracts and/or applicable law Lennar
 15 and Roes 1 through 150 must hold MBH harmless and indemnify it for the amount of any
 16 judgment or settlement, and for expenses, costs of suit, attorneys' fees and other damages and
 17 costs which MBH incurs in connection with this litigation as a result of any negligent, errors, acts
 18 or omissions of Lennar or any contractor or subcontractor employed or retained directly by
 19 Lennar.

20. 14. MBH has incurred, and continues to incur, necessary and reasonable
 21 attorneys' fees and other legal costs in defending this action against Bovis. To the extent that
 22 MBH suffers any losses, costs, claims, damages, liabilities or attorneys' fees as a result of any
 23 negligent errors and/or omissions of Lennar or any contractor or subcontractor employed or
 24 retained directly by Lennar, MBH is entitled to all such losses, costs, claims, damages, liabilities
 25 and attorneys' fees from Lennar. The total amount of MBH's costs and attorneys' fees is not yet
 26 known and MBH will seek leave of court to insert such amount at the time of trial.

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SECOND CAUSE OF ACTION
(Declaratory Relief)

15. MBH refers to and incorporates herein by reference the allegations of Paragraphs 1 – 14 above.

16. An actual controversy has arisen and now exists between MBH and Lennar concerning their respective rights and duties under the Contract concerning the costs and attorneys' fees provision of the Contract.

17. On the one hand, MBH contends that Lennar is liable for a reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in this action or proceeding brought against MBH by Bovis in the event that MBH is determined to be the prevailing party on the contract. On the other hand, on information and belief, Lennar denies that it is liable to MBH for a reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred in this action or proceeding brought against MBH by Bovis in the event that MBH is determined to be the prevailing party on the contract.

18. MBH desires a judicial determination of it and Lennar's right and duties related to this provision in the Contract which allows for an award of reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred to the prevailing party.

19. A judicial declaration is necessary and appropriate at this time under the circumstances in order that MBH may ascertain its and Lennar's rights and obligations related to this provision in the Contract which allows for an award of reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other costs incurred to the prevailing party.

20. To date, MBH has begun to incur attorneys' fees, expert witness and consulting fees, court costs, and other costs related to this action by Bovis.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
 2 as follows:

- 3 1. For a declaration that Lennar is liable to MBH for a reasonable sum for
 4 attorneys' fees, expert witness and consulting fees, court costs, and all other costs
 5 incurred in this action or proceeding brought against MBH by Bovis in the event
 6 that MBH is determined to be the prevailing party;
 7 2. For general damages according to proof;
 8 3. For reasonable attorneys' fees;
 9 4. For punitive damages;
 10 5. For costs of suit herein incurred; and
 11 6. For such other and further relief as the court may deem proper.

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 13 Dated: February 26, 2008

LONG & LEVIT LLP

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 15 By


 16 JENNIFER A. BECKER
 17 JOHN B. SULLIVAN
 18 Attorneys for Defendant and Third Party
 Plaintiff MBH ARCHITECTS, INC. aka
 McNULTY BRISKMAN HEATH

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 20 MBH hereby demands trial by jury.
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22 Dated: February 26, 2008

LONG & LEVIT LLP

23
 24 By


 25 JENNIFER A. BECKER
 26 JOHN B. SULLIVAN
 27 Attorneys for Defendant and Third Party
 Plaintiff MBH ARCHITECTS, INC. aka
 McNULTY BRISKMAN HEATH

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